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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH LEE HARROLD,

Defendant and Appellant.

A126322

(Mendocino County
Super. Ct. No. 09-91169)

Appellant appeals from a final judgment entered after his plea of nolo contendere to a charge of first degree robbery and allegations of a prior felony. Appellant's counsel raises no issues and requests an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441-442.

On the morning of December 4, 2008, appellant and three accomplices carried out a coordinated attack on Jill Baker, who was home alone in Ukiah, California. That morning, Delorean Lawson knocked on Baker's front door and pretended to ask for car "jumpers." When Baker said she had none and attempted to close the door, Lawson produced a handgun, forced himself into the home, and knocked Baker to the ground. Baker struggled and managed to grab the handgun, but was struck by Lawson several times in the face before she was subdued.

Shortly thereafter, James Boissiere entered the home from the front door, proceeded to grab Baker's hair, and both suspects then demanded money. Baker noticed that Boissiere had a handgun in his waistband. Baker told the suspects that she had no money, but that she had marijuana in her bedroom. Once the marijuana was retrieved,

Lawson took Baker to the bathroom, told her to kneel down on the floor, and repeatedly said, “ ‘I’ll kill you, you fucking bitch.’ ” Baker begged Lawson not to kill her. Boissiere yelled to Lawson, “Don’t kill her, just tie her up.” The two suspects subsequently fled through the backyard.

Police investigation soon led to the capture of appellant, Lawson, Boissiere, and Elliott Marshall, the purported leader of the group. A fifth possible suspect, who may have been Marshall’s cousin, was never identified. Both Boissiere and Lawson admitted involvement in the incident.

According to Boissiere and Lawson, appellant was the mastermind behind the attack. Appellant’s original plan was to rob two brothers who resided in Ukiah of approximately 100 pounds of marijuana. That plan was abandoned because appellant learned that the two brothers were armed; appellant proposed Baker’s residence as an alternative. Appellant supplied them with Baker’s floor plans, which he secured by befriending Baker’s husband, and information about Baker’s recent harvest of about 10 pounds of marijuana.

During the interview with police, appellant denied any involvement in the incident. When the police inquired about Marshall, appellant lied about recent communication between the two. Appellant declined an opportunity to submit a written statement and refused to discuss any details about the incident. Instead, appellant stated, “ ‘Let me say this. I made a big mistake. I got nothing from this, other than this [prison].’ ” Appellant continued to reiterate his limited involvement in the incident and that he neither directly participated in the robbery, nor the assault on Baker.

In August 2009, as part of a plea agreement, appellant pleaded nolo contendere to first degree robbery (Pen. Code, §§ 211, 212.5 & 213, subd. (a)(1)(A)), and to a prior felony under Penal Code section 667.5. Pursuant to the plea agreement, the trial court sentenced appellant to the middle term of six years, plus an additional year for the prior offense, minus 134 days credit for time served. The offense constituted a strike under California’s Three Strikes Law. (Pen. Code, § 667 et seq.) Appellant was properly advised about the penalties and consequences of the plea.

The trial court considered the probation department's report and recommendation in reaching its disposition. The report recited that: the offense involved violence and use of a firearm; the offense caused serious injuries (physical and emotional) to Baker, "who was beaten, 'pistol-whipped' (without provocation), and threatened with death." Appellant took advantage of his friendship with Baker's husband to carry out a crime that required "some sophistication" and planning. The report acknowledged that appellant was a "passive participant" because he did not directly participate in the robbery or attack on Baker.

The report further noted that apart from appellant's alcohol and drug abuse, he also has a long criminal record, which includes 21 misdemeanors and one prior felony; the majority of the offenses occurred within a 10-year span. Appellant has had prior prison experience. The report concluded that appellant's lengthy criminal record, history of substance abuse, inability to comply with probation, unemployment, and "negative peer association" demonstrated "a pattern of regular and increasingly serious criminal conduct" and "could be a danger to the community."

The trial court also considered Baker's statement, which held appellant responsible for the incident. Baker said in her statement, "I was faced with the [possibility] of death, permanent disfiguring of my face because of [Harrold]. [¶] I never thought in a million years I would have to bear such terror due to one persons [*sic*] choice." Baker urged the judge to impose full term sentencing. Lastly, the report notes that while appellant regrets his involvement, he displayed minimal remorse for the victim who was "severely traumatized."

We conclude that the trial court's disposition in light of the record was proper and reasonable. The present offense caused serious bodily injury and constituted a significant threat to human life. Although appellant claimed to have only been a passive participant, it was appellant who proposed to rob Baker and provided the necessary information to execute the robbery. We discern no error in the sentencing process or the sentence.

Appellant filed a timely appeal on October 2, 2009. The opening *Wende* brief was filed on February 9, 2010; no supplemental brief was filed by appellant.

Our independent review of the record reveals no arguable issues. The judgment is affirmed.

Lambden, J.

We concur:

Kline, P.J.

Richman, J.